

REMARKS

The Specification has been amended to include the ATCC Accession number. A copy of the ATCC deposit receipt is attached. Applicant has amended claims 1, 3-6, 10, 14 and 22-27. Claims 8-9 and 20-21 have been canceled. New claims 28-30 have been added. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§102(b), 103(a) and 112 rejections as set forth in the Office Action dated May 24, 2006. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to claim 1 for the omission of an "A" at the beginning of the sentence. Applicant has amended claim 1. Withdrawal of this objection is respectfully requested.

The Examiner has objected to claim 21 because the claim does not recite that the claimed plant has modified fatty acid or carbohydrate metabolism. Applicant has canceled claim 21. Withdrawal of this objection is respectfully requested.

The Examiner has rejected claims 8, 9, 20 and 21 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has canceled claims 8, 9, 20 and 21. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-27 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant has amended claims 1, 6 and 23 to include the ATCC Accession number. Additionally, the undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;


- d) the viability of the biological material at the time of deposit was tested; and
- e) the deposit will be replaced if it should ever become inviable or when requested at ATCC.

Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8, 9, 20 and 24-27 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has canceled claims 8, 9 and 20 and has amended claims 24-27. Applicant's Attorney spoke with Examiner on August 11, 2006 regarding the rejection of claims 24-27. Examiner indicated that he inadvertently rejected claims 24-27 and asked Applicant to make a note of this in the Remarks section. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8, 9 and 24-27 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Wolf et al. (HortScience 28(7): 754-755, 1993). Applicant has canceled claims 8-9 and has amended claims 24-27. Additionally, Applicant submits there are numerous significant differences between celery cultivar ADS-3 of the present invention and Florida Slobolt M68. Celery cultivar ADS-3 has an average of five inner petioles, while Florida Slobolt M68 has an average of one to three inner petioles. Celery cultivar ADS-3 has an average petiole length of 36 cm, while the average petiole length of Florida Slobolt M68 is 25.8 cm. Celery cultivar ADS-3 is tolerant to blackheart, while Florida Slobolt M68 is susceptible to blackheart. Celery cultivar ADS-3 is tolerant to brown stem, while Florida Slobolt M68 is susceptible to brown stem. Celery cultivar ADS-3 is tolerant to node cracking and is moderately tolerant to pithiness, while Florida Slobolt M68 is susceptible to node cracking and exhibits pithiness. In view of the above differences, Applicant asserts that celery cultivar ADS-3 is both novel and nonobvious relative to Florida Slobolt M68. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§ 102(b), 103(a) and 112. Reconsideration of this application and an early notice of allowance are respectfully requested.

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED					
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SIGNATURE				DATE	August 18, 2006
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BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

Jondle & Associates P.C.
ATTN: Kenyon L. Schuett
858 Happy Canyon Road suite 230
Castle Rock, CO 80108

Deposited on Behalf of: A. Duda & Sons, Inc.

Identification Reference by Depositor:
Celery Apium graveolens (L.): ADS-2
Celery Apium graveolens (L.): ADS-3

Patent Deposit Designation
PTA-7734
PTA-7735

The seeds were accompanied by: ☒ a scientific description ☐ a proposed taxonomic description indicated above. The seeds were received July 18, 2006 by this International Depository Authority and have been accepted.

AT YOUR REQUEST: ☒ We will inform you of requests for the seeds for 30 years.

The seeds will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the seeds and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said seeds.

If the seeds should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with viable seeds of the same.

The seeds will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the seeds cited above was tested July 31, 2006. On that date, the seeds were viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

Dee Bishop, ATCC Patent Depository

Date: August 4, 2006